United Nations A/C.6/53/13

General Assembly

Distr.: General
30 November 1998
English
Original: Spanish

**Fifty-third session**
**Sixth Committee**
Agenda item 149
**United Nations Decade of International Law**

## Letter dated 9 November 1998 from the Permanent Representative of Peru to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith copies of the following documents:

(a) The letters from the Presidents of Peru and Ecuador addressed to the President of Brazil in his capacity as Coordinator of the Guarantor Countries of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942 (see annex I);

(b) The reply from the President of Brazil addressed to the Head of State of Peru (see annex II);

(c) Legislative resolution of the Congress of Peru approving the request of the Guarantor Countries (see annex III);

(d) Proposed solution by the Guarantor Countries (see annex IV);

(e) The Brasilia Presidential Act signed by the Presidents of Peru and Ecuador jointly with the representatives of the Guarantor Countries (see annex V).

The aforementioned documents are the outcome of the process of talks initiated by Peru and Ecuador on 17 February 1995 with the signing of the Itamaraty Declaration and bring to a lasting end the disagreements between the two countries concerning demarcation in accordance with the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, the Braz Dias de Aguiar arbitral award of 1945 and their supplementary instruments. These agreements have been reached with the assistance of the Guarantor Countries of the aforementioned Protocol in accordance with the role assigned to them by the Protocol.

Together with this agreement, the Ministers for Foreign Affairs of Peru and Ecuador signed a treaty on Free Trade and Navigation in application of article 6 of the aforementioned Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, a comprehensive agreement on border integration, development and good-neighbourliness between Peru and Ecuador, and an agreement on the establishment of a commission on mutual confidence- and security-building measures.

I should be grateful if you would arrange to have this letter and the annexes thereto circulated as a document of the General Assembly under agenda item 149.

(*Signed*) Fernando **Guillen**
Permanent Representative

98-36459 (E) 021298 021298

# Annex I

## Letter dated 8 October 1998 from the Presidents of Peru and Ecuador addressed to the President of Brazil

With the valuable and active cooperation of the Guarantor Countries of the Rio de Janeiro Protocol, efficiently coordinated by the Federative Republic of Brazil, our countries have, since the signing of the Itamaraty Declaration of Peace of 17 February 1995, been engaged in a process of substantive talks with a view to achieving a comprehensive and lasting settlement of our differences and laying the foundations for a future of peace and joint development for our nations.

The results obtained during the various stages of this peace process have led to the adoption of compromise formulas for resolving some of the remaining impasses and other issues of common interest through the joint efforts of the binational commissions established in accordance with the timetable signed by the parties in Rio de Janeiro on 19 January 1998.

We are pleased to inform you and, through you, the Presidents of the other Guarantor Countries, that Ecuador and Peru have reached agreements that could be formalized as part of the comprehensive and lasting agreement that we are seeking to achieve.

These agreements concern a treaty on trade and navigation, navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river, a comprehensive agreement on border integration, the establishment of a binational commission on mutual confidence- and security-building measures and the elaboration of measures aimed at ensuring the efficient functioning of the Zarumilla channel.

Despite these significant achievements and the efforts made by the binational commissions, by the Ministries for Foreign Affairs and by us personally, it has not been possible to find a mutually acceptable formula for completing the delimitation of a common land boundary in accordance with the Rio de Janeiro Protocol, the Braz Diaz de Aguiar arbitral award and the timetable of 19 January 1998.

In the light of the foregoing and in accordance with article 7 of the Rio de Janeiro Protocol and point 4 of the Santiago Agreement of October 1996, we have agreed to submit a request through you to the Presidents of the Guarantor Countries, asking them to formulate a proposal that, within the legal framework which binds us and taking into account the progress made in the process initiated with the Itamaraty Declaration of Peace, would contribute to the attainment of the objectives of peace, friendship, understanding and goodwill to which we are committed.

The proposal which you see fit to present could lead to a settlement that would make it possible to resolve, in a comprehensive and lasting manner, the differences that still exist between our two countries. It would also be further evidence of the fulfilment by the Guarantor Countries of the responsibility they assumed under the Rio de Janeiro Protocol. This important support would earn the gratitude of Ecuador and Peru.

On the occasion of formulating this request, we confirm the commitment of our countries to peace and our firm determination to achieve a diplomatic solution as the only way of laying a permanent foundation for peace and friendship between Ecuador and Peru. We are fully aware that such a solution would benefit the development of our countries and the entire hemisphere.

We take this opportunity to convey to you the renewed assurances of our highest consideration.

(*Signed*) Alberto **Fujimori**
President of the Republic of Peru

(*Signed*) Jamil **Mahuad Witt**
President of the Republic of Ecuador

# Annex II

## Letter dated 10 October 1998 from the President of Brazil, addressed to the President of Peru in reply to the joint communication addressed to him by the Presidents of Peru and Ecuador

I have the honour to refer to the request which you and the President of Ecuador addressed, through me, to the Heads of State of the Guarantor Countries of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, asking for our assistance in the formulation of a proposal that would permit progress in the efforts to attain the objectives of peace, friendship, understanding and goodwill between Peru and Ecuador.

In that connection, I believe it would be appropriate to observe that, since the Protocol entered into force, Brazil and the Governments of Argentina, Chile and the United States have repeatedly demonstrated their readiness to assist the parties when the latter considered it necessary. In that context, I am pleased to reiterate that the Guarantor Countries are likewise ready to assist the efforts to attain the aforementioned objectives.

We believe that in the current circumstances and by virtue of point 4 of the Santiago Agreement, the view of the Guarantor Countries of the Protocol should be binding on the Parties if the procedure requested by you is to permit the resolution of the difficulties encountered in the process initiated with the Itamaraty Declaration and the attainment of the objectives of peace and friendship within the framework of the Rio de Janeiro Protocol.

In order to ensure this binding character, we shall only submit a proposal if the Congresses of both countries have approved that procedure. The Guarantor Countries consider that the success of the solution depends on the speedy resolution of that question. Since three of the Heads of State of the four Guarantor Countries of the Rio de Janeiro Protocol will be present at the forthcoming Oporto meeting, it would be very useful if the decisions of the Congresses of Ecuador and Peru were made known by that time.

Our proposal will relate to a comprehensive and lasting agreement, and will therefore encompass the agreements already reached between Ecuador and Peru and a formula for settling outstanding issues relating to the delimitation of the common land border.

In view of the keen interest with which His Holiness Pope John Paul II has followed the evolution of the peace process and the profound religious convictions of the peoples of Peru and Ecuador, the Guarantors will request a Papal blessing once we have established a settlement formula in accordance with the Rio de Janeiro Protocol.

Fernando Henrique **Cardoso**
President of the Federative Republic of Brazil

# Annex III

## Approval by the Congress of Peru of the request of the Guarantors (16 October 1998)

Legislative resolution

Considering:

That it is of vital importance for the Republic that the border between Peruvian territory and the Republic of Ecuador should be not only delimited but also completely demarcated.

That, in connection with that border, the two countries signed in 1942 the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, which was approved by the Congresses of Peru and Ecuador.

That the aforementioned Protocol provides that the Governments of Argentina, Brazil, Chile and the United States of America are the Guarantors of the Protocol.

That when a disagreement arose concerning the interpretation of the Protocol in the Cordillera del Cóndor sector, the Parties decided to submit the question to arbitration by Braz Dias de Aguiar, who settled the dispute in a lasting manner by establishing in his award the line which the border should follow.

That on the basis of the Protocol and the aforementioned award the demarcation was carried out and the corresponding markers placed on approximately 90 per cent of the border. However, the demarcation could not be completed because before its completion the Republic of Ecuador objected to the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942.

That despite the traditional desire for peace which has characterized Peru, this controversial situation has given rise in recent decades to regrettable armed conflicts between the two countries in which young Peruvians and Ecuadorians lost their lives.

That since the latest conflict, in 1995, substantive talks have been undertaken within the framework of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, the Braz Dias de Aguiar award and other supplementary instruments with a view to completing the placement of markers within the framework of a comprehensive and lasting agreement. Success in these talks is the best way of strengthening peace between Peru and Ecuador.

That after the positions of the two countries with regard to the elimination of differences had been substantially reconciled, within the framework of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, an impasse developed in the final stage of the talks that could have brought the process to a halt, creating the risk of further armed conflicts. It was therefore considered essential to find a legal way out of the situation.

That article 7 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942 provides that "any doubt or disagreement which may arise over the execution of this Protocol shall be resolved by the Parties with the assistance of the representatives of the United States, Argentina, Brazil and Chile within the shortest period possible". Furthermore, point 4 of the Santiago Agreement empowers the Guarantor Countries "to propose the most appropriate procedures for the lasting solution of the points of disagreement that the Parties have not succeeded in resolving directly".

That in application of the aforementioned rules, the Governments of the two countries have requested the Guarantors to lend assistance with a view to overcoming the current difficulty and achieving a comprehensive and lasting agreement. For their part, the Guarantor Countries have expressed their readiness to lend assistance in order that the Parties may reach an agreement, offering to Peru and Ecuador to submit a proposal concerning the problem which has arisen with regard to the delimitation of the common land border in application of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942. The proposal should be binding in character and, furthermore, the will of the Parties must be supported by their respective Congresses.

That this proposal is appropriate because the text of the letter from the parties requesting the assistance of the Guarantors, like the text of the reply by the latter, establishes clearly that this view would be based on legal, not political, considerations. This legal approach is required by the framework linking the two countries, consisting of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, and the Braz Dias de Aguiar award, and by the progress made during the process initiated with the Itamaraty Declaration of Peace. The latter includes the opinions of the legal and technical groups appointed by the Guarantors, which were issued in May 1998.

That at the request of the President of the Republic, the Joint High Command of the Armed Forces has reported that the procedure proposed by the Guarantor Countries in no way jeopardizes the sovereignty or territorial integrity of our

country, since it adheres to the aforementioned legal framework.

That for all these reasons the Congress agrees to tne request of the Executive Power, supporting it in this undertaking which it will assume in exercise of the powers conferred on it by article 118 of the Constitution. This support does not constitute an exception to the need for international treaties to be approved before they are ratified, as established in article 56 of the Constitution, or to any other intervention by the Legislative Power that may be required under the Constitution and the laws of the Republic.

That Peru wishes to overcome its historical disagreements with fraternal countries, so that the challenge of the economic, political, social and cultural integration of the nations of Latin America may be faced and a joint struggle waged to achieve peace and combat underdevelopment and poverty.

Adopts the following legislative resolution:

Article 1. Purpose of the resolution: To approve the procedure proposed by the Guarantor Countries and by the Executive Power, with a view to permitting those countries to assist in resolving the disagreements concerning the delimitation of the common land border, in accordance with the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, the Braz Dias de Aguiar award and other supplementary legal instruments, and the progress made during the process initiated with the Itamaraty Declaration of Peace.

Article 2. Approval of other international instruments: The comprehensive agreement on border integration and the treaty on trade and navigation to be signed shall be submitted to Congress for its approval before they are ratified, in accordance with the Constitution and laws of the Republic.

Article 3. Time limit for the application of the procedure:

3.1. The application of the procedure referred to in article 1 must take place "within the shortest period possible", in accordance with article 7 of the Protocol of Peace, Friendship and Boundaries of 1942.

3.2. If for any reason the Peruvian Congress considers that the time taken to resolve the disagreements has unreasonably exceeded the criterion referred to in the preceding paragraph, the authorization granted in this resolution shall become null and void.

The resolution was adopted by 87 votes to 26 with 1 abstention and 6 absent. Total, 120 legislators.

# Annex IV

## Proposed solution by the Heads of State of the Guarantor Countries addressed to the President of Peru (Brasilia, 23 October 1998)

In accordance with article 7 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, our Governments assumed the role of Guarantors of the implementation of that treaty. In so doing, we undertook to facilitate understandings between the Parties whenever necessary. This responsibility involves the introduction of elements that might elucidate those points on which disagreements exist.

We, the Guarantor Countries, must recognize that the Parties, on the basis of the Rio de Janeiro Protocol and in conformity with the Itamaraty Declaration of Peace and other documents emanating from the process initiated with it, have sought to attain the lofty objectives of peace, friendship and understanding that would enable them to develop a cooperative relationship of mutual benefit in accordance with the purposes set forth in article 1 of the Protocol.

We therefore note with satisfaction that this process has so far produced drafts concerning a treaty on trade and navigation, navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river, a comprehensive agreement on border integration, the establishment of a binational commission on mutual confidence- and security-building measures, and an agreement on the elaboration of measures aimed at ensuring the effective functioning of the Zarumilla channel.

Your Government has, together with the Government of Ecuador, conveyed to us its concern at having endeavoured throughout this protracted process to complete all the items in the understandings, as described by the Brasilia Declaration of 26 November 1997 and the timetable signed in Rio de Janeiro on 19 January 1998, without achieving results commensurate with the expectations of the two peoples. As you mentioned in the joint letter which you and the President of Ecuador sent to the President of Brazil on 8 October 1998, the difficulties encountered have to do with the completion of the delimitation of the common land boundary.

In the aforementioned letter, the Parties requested our assistance in formulating a comprehensive and lasting proposal that would contribute to the attainment of the objectives of peace, friendship, understanding and goodwill by which they are motivated. Our Governments, by means of the letter dated 10 October 1998 from the President of Brazil, informed you that arriving at such a proposal would require the prior agreement of the two Governments that our view is binding on the Parties and the approval by the Peruvian and Ecuadorian Congresses of the commitments made.

These requirements having been met, we, the Heads of State of the Guarantor Countries, in accordance with the Santiago Agreement and the timetable signed in Rio de Janeiro, therefore express our view, which the Parties have accepted as binding, and which contains the following elements for completion of the delimitation of the common land boundary and thus for completion of the comprehensive and lasting agreement:

(1) With regard to the differences between the Parties as to the opinions of the experts designated by the Guarantor Countries, in accordance with the timetable for implementation of the Brasilia Declaration, on the three issues submitted for their consideration, the Guarantor Countries consider that these opinions constitute the application of the provisions of the Rio de Janeiro Protocol and the Braz Dias de Aguiar arbitral award; accordingly, the Parties should proceed to complete the delimitation in the manner set forth in the aforementioned opinions. To that end, the geographical maps annexed hereto specify the geographical coordinates of the landmarks to be established.

(2) In accordance with the attached sketch, the Government of Peru shall transfer as private property to the Government of Ecuador an area of 1 $km^2$, the centre of which shall be the point provided to the Ecuador-Peru Military Observer Mission (MOMEP) by Ecuador, called Tiwinza, in the sector known in Ecuador as Tiwinza.

(3) The transfer shall take place free of charge by means of a public instrument to be concluded by the respective entities of Peru and Ecuador. It shall be signed upon the entry into force of the comprehensive and lasting agreement. This transfer shall not imply the assignment of sovereignty. The aforementioned property shall not be subject to confiscation by the Government of Peru.

(4) The Government of Ecuador shall, in its capacity as owner of the land, enjoy the real property rights conferred by the private national law of Peru, with the exception of the right of transfer. The exploitation of this land by Ecuador shall be consistent with the conservation norms applicable to the area in which it is situated.

(5) Within the area belonging to it, the Government of Ecuador shall not station police or military forces or carry out any police or military activities, with the exception of commemorative ceremonies coordinated beforehand with the Government of Peru.

(6) Ecuadorian nationals may transit freely via a single public carriage road of up to 5 m in width which connects the area transferred as property with the territory of Ecuador. This road shall be brought into service 30 months following the entry into force of the comprehensive and lasting agreement, and shall be maintained for this purpose by Peru on the shortest and most accessible path leading to the territory of Ecuador. The technical committee referred to in paragraph 9 of the Protocol shall be responsible for determining the path of this road. The respective border control posts shall be set up for this purpose on both sides of the border. In view of the environmentally sensitive nature of the area, no weapons of any kind may be transported from one country to another.

(7) Each Party shall, within its territory and in accordance with its national legislation, establish an environmentally protected area under the sovereignty and jurisdiction of the respective State within the areas and perimeters specified in the attached sketch. The two environmentally protected areas shall have the same name and shall be adjacent and contiguous within the common boundary sector which they encompass.

(8) Members of the indigenous communities of the region may transit freely between the two environmentally protected areas.

(9) The administration of each area shall be under the authority of the competent and specialized authorities of the respective country, who shall coordinate with each other through a Peruvian-Ecuadorian technical committee, and shall request national and international private non-profit entities specializing in natural resources conservation and management to prepare the requisite studies and to collaborate in the management of natural resources so as to ensure their appropriate conservation.

(10) The respective national police authorities and park rangers shall be responsible for the security of each environmentally protected area. The border posts of each Party situated within each of these areas shall be under the authority of police units, and, in view of their environmentally protected nature, no new military posts shall be established within their boundaries. The military posts existing within each park, namely, the Coangos post in Ecuador and the PV1 post in Peru, may retain their current levels of personnel, not to exceed 50 at each post.

(11) In addition, the Parties shall proceed to formalize the draft treaties and agreements whose texts form part of the comprehensive and lasting agreement that will put an end to the differences between the two countries. We also have the pleasure to inform you that, as we stated in our letter of 10 October, this settlement formula has been brought to the attention of His Holiness Pope John Paul II, who takes deep satisfaction in the achievement of this lofty compromise and prays that this agreement may be the basis of a lasting coexistence, in peace and prosperity, between the fraternal peoples of Peru and Ecuador.

The Guarantor Countries consider that, in this way, the process initiated with the Itamaraty Declaration of Peace will have been completed in a manner that takes into account the interests and feelings of the two nations and ensures the full and faithful implementation of the Rio de Janeiro Protocol. That will enable the aspirations of the peoples of Peru and Ecuador for peace, friendship and confidence in a common future to flourish.

(*Signed*) Carlos Saúl **Menem**
President of Argentina

(*Signed*) Fernando Henrique **Cardoso**
President of Brazil

(*Signed*) Eduardo **Frei**
President of Chile

(*Signed*) William **Clinton**
President of the
United States of America

# Annex V

## Text of the Brasilia Presidential Act of 26 October 1998

1. Express their conviction regarding the historic significance of the understandings reached between the two Governments for the development and well-being of the fraternal peoples of Ecuador and Peru. With these understandings, the process of substantive talks provided for in the Itamaraty Declaration of Peace of 17 February 1995 has been completed and a comprehensive and lasting end has been put to the differences between the two republics, so that, on the basis of their common roots, the two nations can advance towards a promising future based on cooperation and mutual benefit;

2. Declare that, with the binding view expressed by the Heads of State of the Guarantor Countries in their letter dated 23 October, which forms an integral part of this document, the border disputes between the two countries have been settled definitively. On this basis, the firm and unshakeable will of their Governments to complete the delimitation of the common land boundary within the shortest possible time has been placed on record;

3. Simultaneously declare their commitment to submit the agreements signed on this date to the domestic ratification procedures, as necessary, with a view to ensuring their speedy entry into force.

These agreements are as follows: the Treaty on Trade and Navigation, in application of article 6 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries; the Comprehensive Agreement on Border Integration, which includes the establishment of a Peruvian-Ecuadorian Good-Neighbourliness Commission; a Treaty on the Transit of Persons, Vehicles, Maritime and Fluvial Vessels and Aircraft; a Binational Plan for Border Area Development, which includes a Binational Fund for Peace and Development; an Agreement for the Acceleration of Trade Liberalization; a Memorandum of Understanding on the Puyango-Tumbes Binational Project; a Memorandum of Understanding on the Tumbes-Machala Development Plan; a Memorandum of Understanding on Road Connections between the two countries; an Agreement on Electrical Connections and an Agreement on Oil Pipeline Connections; a Memorandum of Understanding on the Promotion of Tourism; an Agreement on Cooperation in the Fisheries Sector; a Supplementary Agreement on Educational Cooperation; a Framework Agreement on the rehabilitation or reconstruction of the inlet and related construction work on the Zarumilla channel, and Administrative Regulations concerning the Zarumilla channel and the exploitation of its waters; a specific Agreement on matters relating to navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river; an agreement for the establishment of a Commission on Mutual Confidence- and Security-building Measures.

4. Expressly place on record the importance of the agreements reached for the ideals of peace, stability and prosperity to which the American continent is committed. In that connection, and in accordance with article 1 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, they solemnly reaffirm their rejection of the threat or use of force in relations between Peru and Ecuador and of all acts that may undermine peace and friendship between the two nations.

5. The Presidents of Ecuador and Peru, wishing to emphasize their appreciation for the fundamental role played in the attainment of these understandings by the Governments of the Argentine Republic, the Federative Republic of Brazil, the Republic of Chile and the United States of America, the Guarantor Countries of the Protocol of Peace, Friendship and Boundaries signed in Rio de Janeiro on 29 January 1942, place on record the gratitude of their nations for the dedication and effort shown by those countries in seeking the implementation of the Protocol, and call upon them to continue to fulfil that function until the delimitation has been completed.

This Act has been signed by His Excellency Mr. Alberto Fujimori, President of the Republic of Peru, and His Excellency Mr. Jamil Mahuad Witt, President of the Republic of Ecuador, and endorsed by Mr. Fernando de Trazegnies Granda, Minister for Foreign Affairs of Peru, and Mr. José Ayala Lasso, Ambassador of Ecuador.

The following persons have signed it in their capacity as witnesses of this solemn ceremony: His Excellency Mr. Fernando Henrique Cardoso, President of the Federative Republic of Brazil; His Excellency Mr. Carlos Saúl Menem, President of the Argentine Republic; His Excellency Eduardo Frei Ruiz-Tagle, President of the Republic of Chile; and the Personal Representative of the President of the United States of America, Mr. Thomas F. McLarty III.

# Alto Rio Cenepa - Coangos

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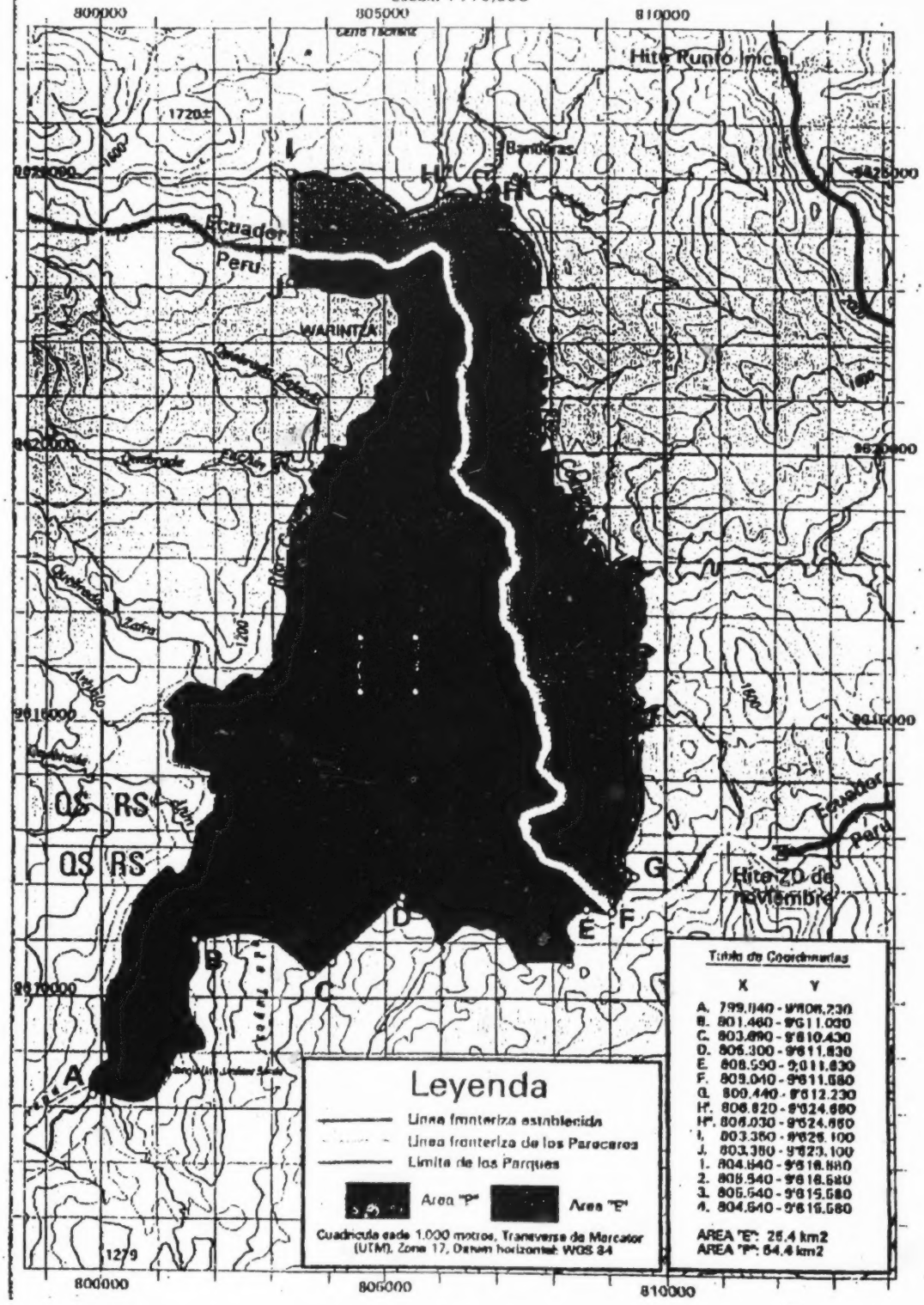

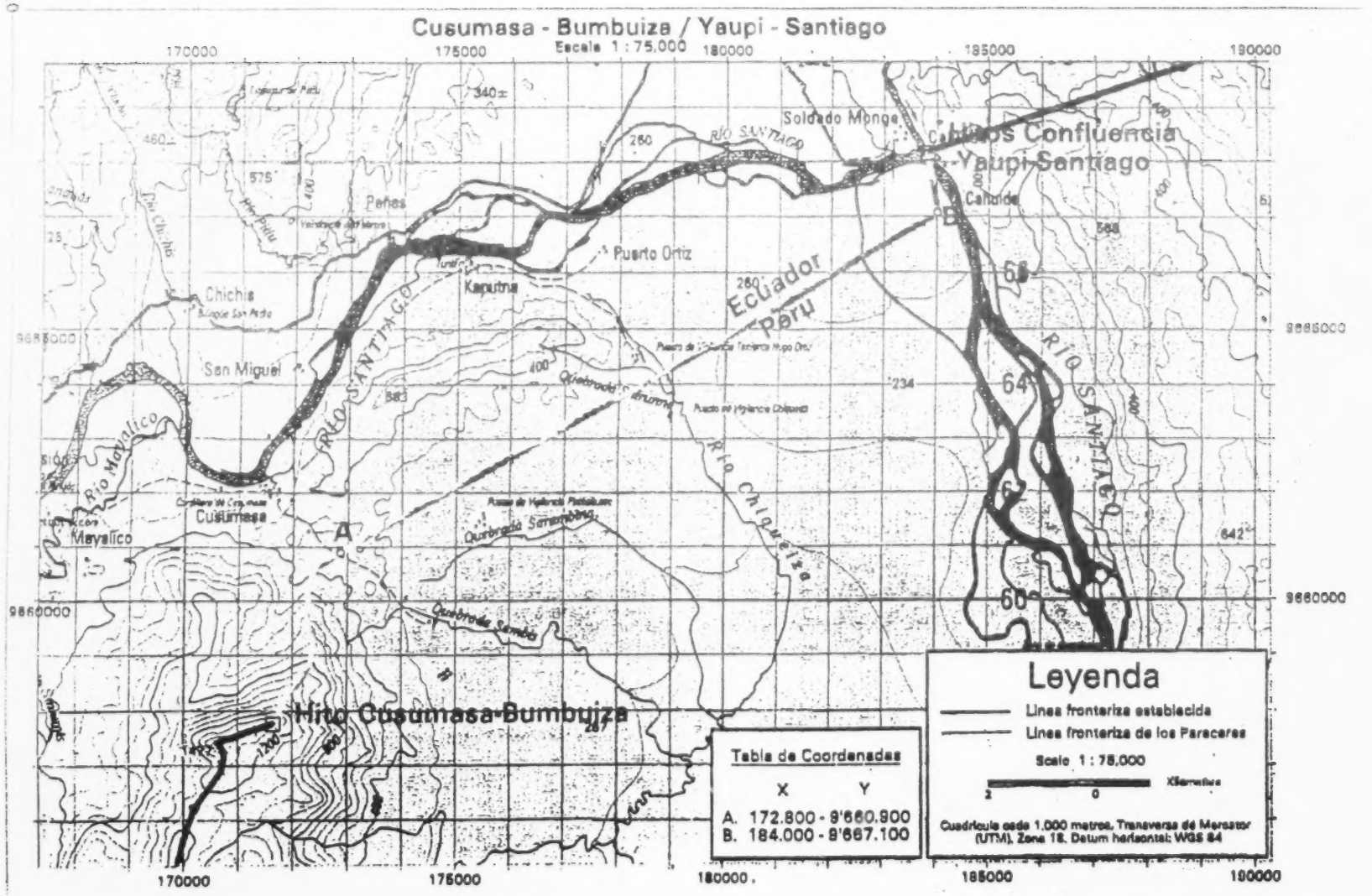
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170000
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Yaupi-Santiago
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Puerto Ortiz
Kaputna
Chichis
San Miguel
Río Mayalico
Río Santiago
Ecuador
Perú
Río Chiguelza
Río Santiago
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Quebrada Semabing
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B. 184.000 - 9'667.100
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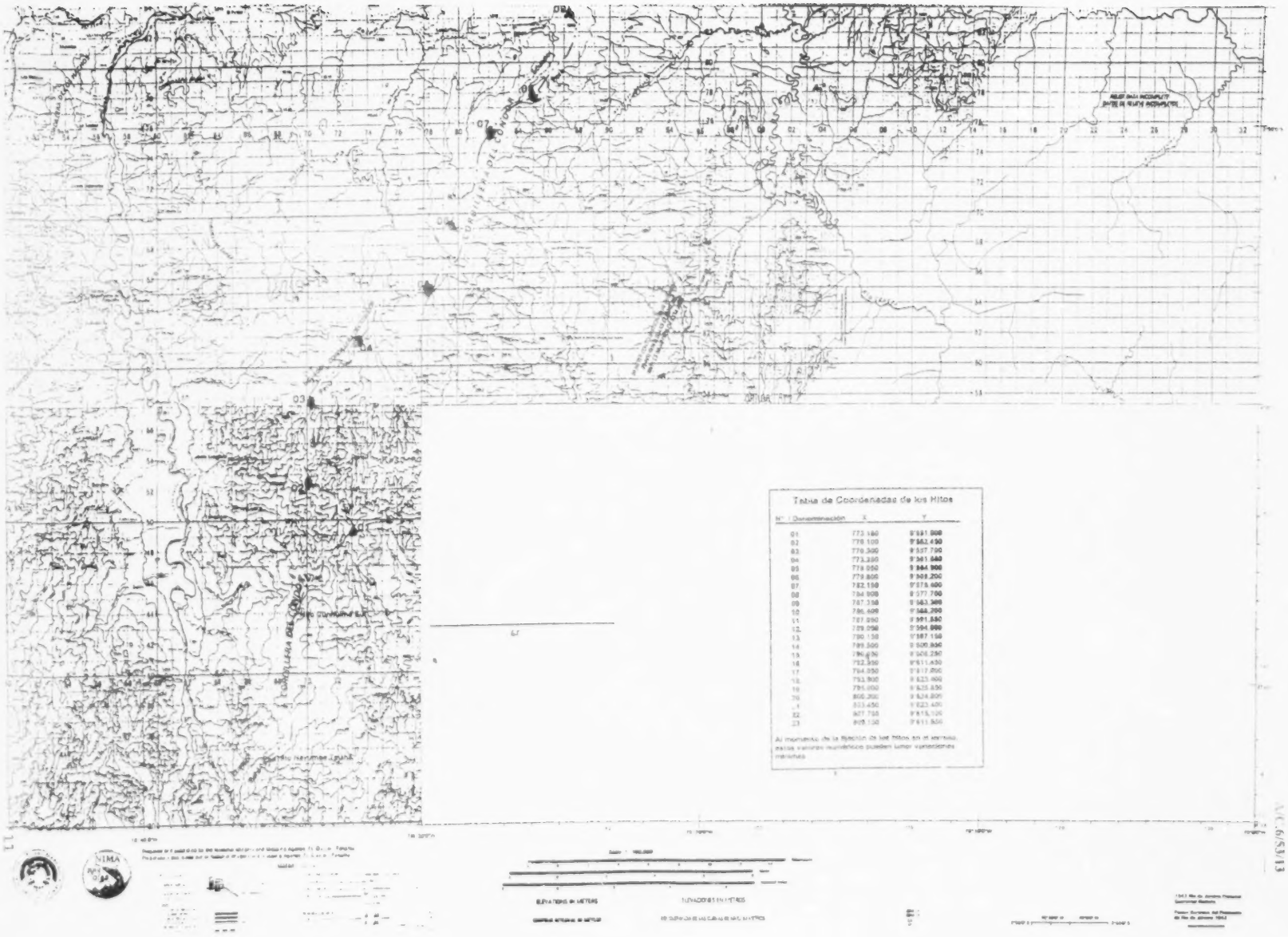

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| 04 | | 773.350 | 9'561.840 |
| 05 | | 778.050 | 9'564.900 |
| 06 | | 779.800 | 9'569.200 |
| 07 | | 782.150 | 9'575.600 |
| 08 | | 784.900 | 9'577.700 |
| 09 | | 787.150 | 9'582.300 |
| 10 | | 786.400 | 9'588.200 |
| 11 | | 787.250 | 9'591.550 |
| 12 | | 789.050 | 9'594.900 |
| 13 | | 790.150 | 9'597.150 |
| 14 | | 789.500 | 9'600.800 |
| 15 | | 790.450 | 9'606.250 |
| 16 | | 792.350 | 9'611.450 |
| 17 | | 794.050 | 9'617.000 |
| 18 | | 793.900 | 9'623.400 |
| 19 | | 795.000 | 9'625.850 |
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| 21 | | 803.450 | 9'623.400 |
| 22 | | 807.750 | 9'615.100 |
| 23 | | 805.150 | 9'611.500 |

Al momento de la ejecución de los hitos en el terreno, estas valores numéricos pueden tener variaciones mínimas

ELEVATIONS IN METERS

ELEVACIONES EN METROS

ECUADOR PERU HRSTIA990053 23 Octubre 1998

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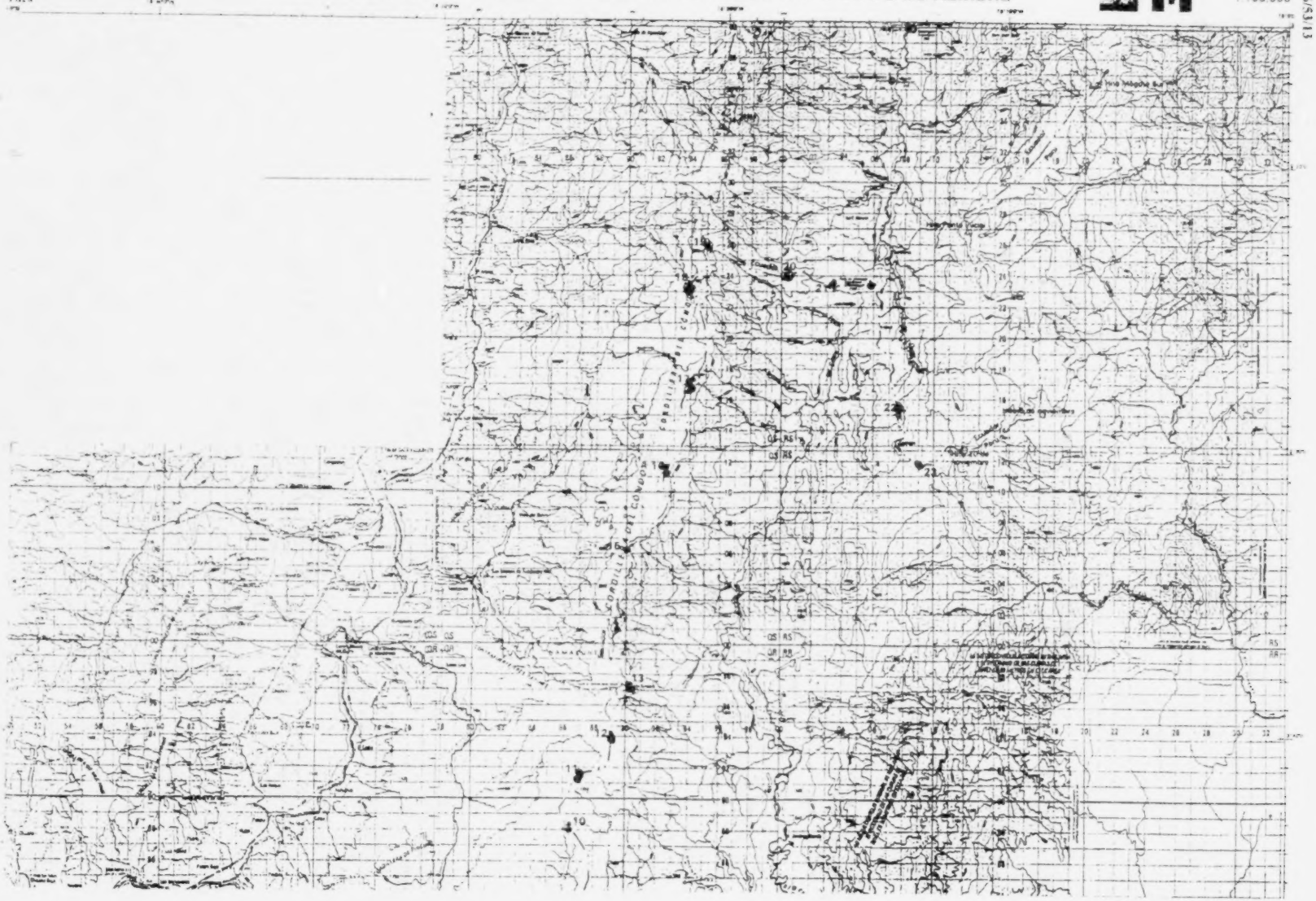

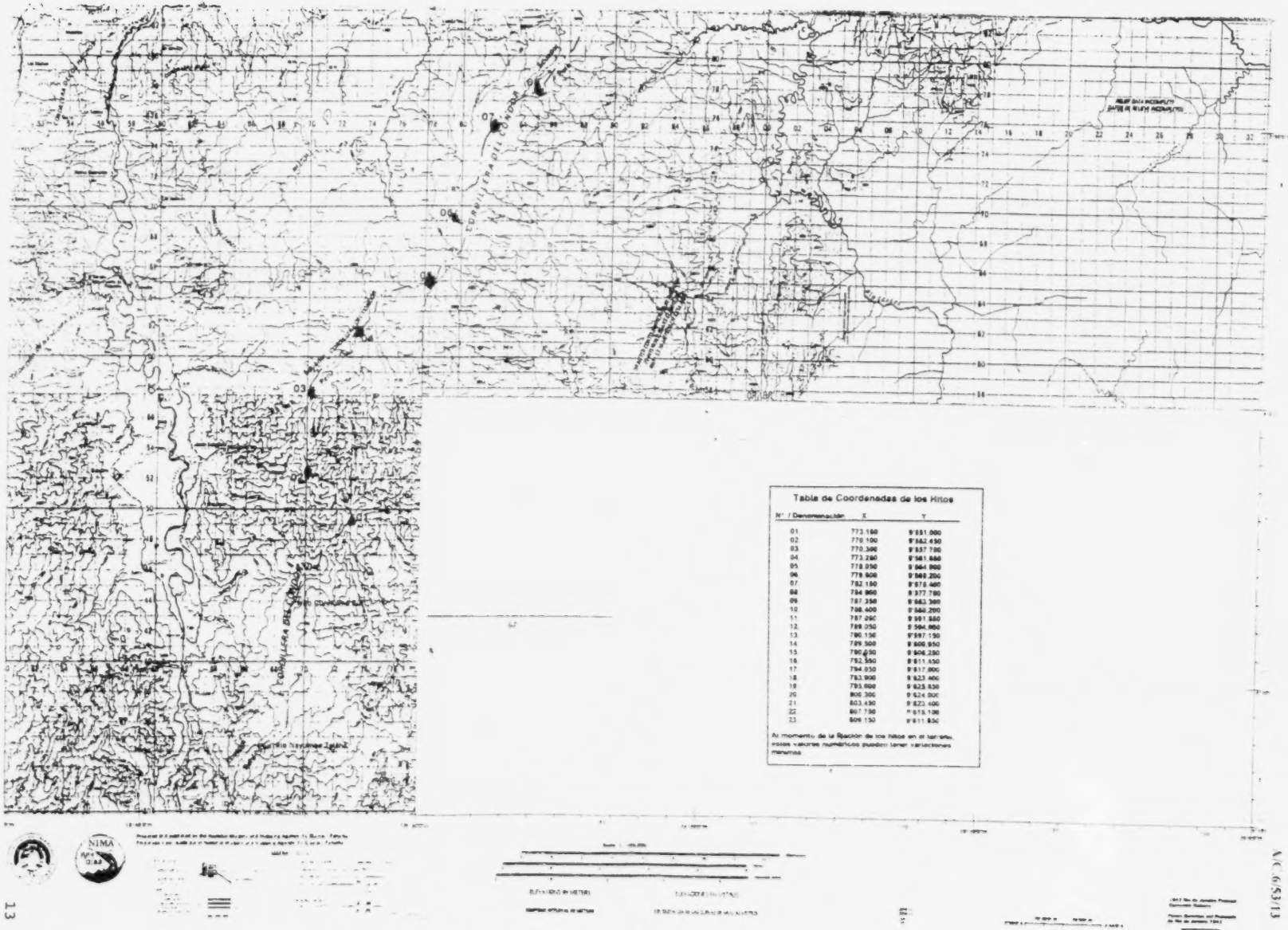

Tabla de Coordenadas de los Hitos

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| 05 | 778.050 | 9'864.900 |
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| 10 | 786.400 | 9'888.200 |
| 11 | 787.290 | 9'891.880 |
| 12 | 789.050 | 9'894.960 |
| 13 | 790.150 | 9'897.150 |
| 14 | 789.500 | 9'900.950 |
| 15 | 790.250 | 9'904.230 |
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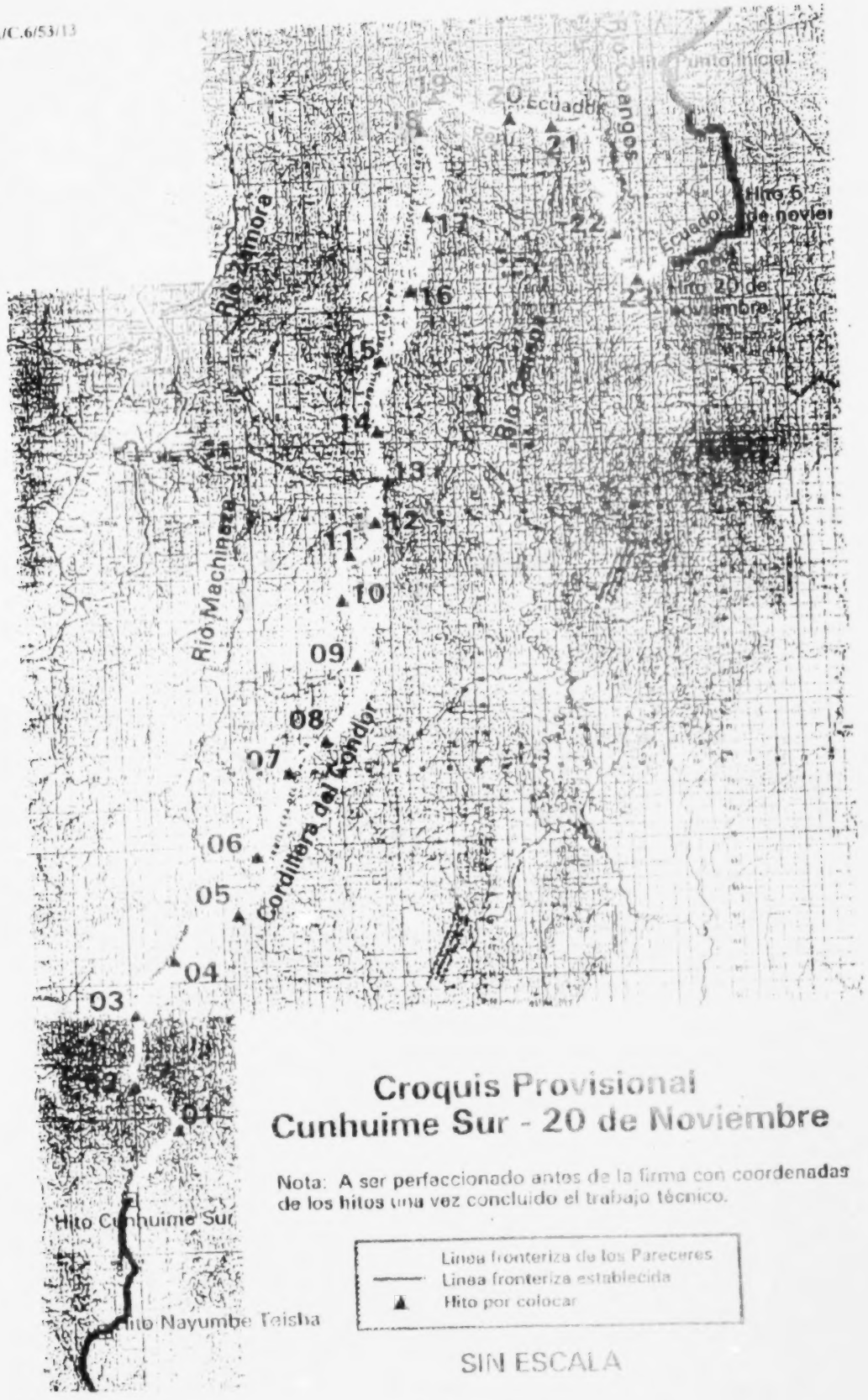


## Croquis Provisional
## Cunhuime Sur - 20 de Noviembre

Nota: A ser perfaccionado antes de la firma con coordenadas de los hitos una vez concluido el trabajo técnico.

Linea fronteriza de los Pareceres
Linea fronteriza establecida
Hito por colocar

SIN ESCALA

United Nations A/C.6/53/13*

General Assembly

Distr.: General
9 December 1998
English
Original: Spanish

**Fifty-third session**
**Sixth Committee**
Agenda item 149
**United Nations Decade of International Law**

## Letter dated 9 November 1998 from the Permanent Representative of Peru to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith copies of the following documents:

(a) The letter from the Presidents of Peru and Ecuador addressed to the President of Brazil in his capacity as Coordinator of the Guarantor Countries of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942 (see annex I);

(b) The reply from the President of Brazil addressed to the Head of State of Peru (see annex II);

(c) Legislative resolution of the Congress of Peru approving the request of the Guarantor Countries (see annex III);

(d) Proposed solution by the Guarantor Countries (see annex IV);

(e) The Brasilia Presidential Act signed by the Presidents of Peru and Ecuador jointly with the representatives of the Guarantor Countries (see annex V).

The aforementioned documents are the outcome of the process of talks initiated by Peru and Ecuador on 17 February 1995 with the signing of the Itamaraty Declaration and bring to a lasting end the disagreements between the two countries concerning demarcation in accordance with the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, the Braz Dias de Aguiar arbitral award of 1945 and their supplementary instruments. These agreements have been reached with the assistance of the Guarantor Countries of the aforementioned Protocol in accordance with the role assigned to them by the Protocol.

Together with this agreement, the Ministers for Foreign Affairs of Peru and Ecuador signed a treaty on Free Trade and Navigation in application of article 6 of the aforementioned Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, a comprehensive agreement on border integration, development and good-neighbourliness between Peru and Ecuador, and an agreement on the establishment of a commission on mutual confidence- and security-building measures.

I should be grateful if you would arrange to have this letter and the annexes thereto circulated as a document of the General Assembly under agenda item 149.

(*Signed*) Fernando **Guillen**
Permanent Representative

* Reissued for technical reasons.

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# Annex I

## Letter dated 8 October 1998 from the Presidents of Peru and Ecuador addressed to the President of Brazil

With the valuable and active cooperation of the Guarantor Countries of the Rio de Janeiro Protocol, efficiently coordinated by the Federative Republic of Brazil, our countries have, since the signing of the Itamaraty Declaration of Peace of 17 February 1995, been engaged in a process of substantive talks with a view to achieving a comprehensive and lasting settlement of our differences and laying the foundations for a future of peace and joint development for our nations.

The results obtained during the various stages of this peace process have led to the adoption of compromise formulas for resolving some of the remaining impasses and other issues of common interest through the joint efforts of the binational commissions established in accordance with the timetable signed by the parties in Rio de Janeiro on 19 January 1998.

We are pleased to inform you and, through you, the Presidents of the other Guarantor Countries, that Ecuador and Peru have reached agreements that could be formalized as part of the comprehensive and lasting agreement that we are seeking to achieve.

These agreements concern a treaty on trade and navigation, navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river, a comprehensive agreement on border integration, the establishment of a binational commission on mutual confidence- and security-building measures and the elaboration of measures aimed at ensuring the efficient functioning of the Zarumilla channel.

Despite these significant achievements and the efforts made by the binational commissions, by the Ministries for Foreign Affairs and by us personally, it has not been possible to find a mutually acceptable formula for completing the on-site marking of a common land boundary in accordance with the Rio de Janeiro Protocol, the Braz Diaz de Aguiar arbitral award and the timetable of 19 January 1998.

In the light of the foregoing and in accordance with article 7 of the Rio de Janeiro Protocol and point 4 of the Santiago Agreement of October 1996, we have agreed to submit a request through you to the Presidents of the Guarantor Countries, asking them to formulate a proposal that, within the legal framework which binds us and taking into account the progress made in the process initiated with the Itamaraty Declaration of Peace, would contribute to the attainment of the objectives of peace, friendship, understanding and goodwill to which we are committed.

The proposal which you see fit to present could lead to a settlement that would make it possible to resolve, in a comprehensive and lasting manner, the differences that still exist between our two countries. It would also be further evidence of the fulfilment by the Guarantor Countries of the responsibility they assumed under the Rio de Janeiro Protocol. This important support would earn the gratitude of Ecuador and Peru.

On the occasion of formulating this request, we confirm the commitment of our countries to peace and our firm determination to achieve a diplomatic solution as the only way of laying a permanent foundation for peace and friendship between Ecuador and Peru. We are fully aware that such a solution would benefit the development of our countries and the entire hemisphere.

We take this opportunity to convey to you the renewed assurances of our highest consideration.

(*Signed*) Alberto **Fujimori**
President of the Republic of Peru

(*Signed*) Jamil **Mahuad Witt**
President of the Republic of Ecuador

# Annex II

## Letter dated 10 October 1998 from the President of Brazil, addressed to the President of Peru in reply to the joint communication addressed to him by the Presidents of Peru and Ecuador

I have the honour to refer to the request which you and the President of Ecuador addressed, through me, to the Heads of State of the Guarantor Countries of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, asking for our assistance in the formulation of a proposal that would permit progress in the efforts to attain the objectives of peace, friendship, understanding and goodwill between Peru and Ecuador.

In that connection, I believe it would be appropriate to observe that, since the Protocol entered into force, Brazil and the Governments of Argentina, Chile and the United States have repeatedly demonstrated their readiness to assist the parties when the latter considered it necessary. In that context, I am pleased to reiterate that the Guarantor Countries are likewise ready to assist the efforts to attain the aforementioned objectives.

We believe that in the current circumstances and by virtue of point 4 of the Santiago Agreement, the view of the Guarantor Countries of the Protocol should be binding on the Parties if the procedure requested by you is to permit the resolution of the difficulties encountered in the process initiated with the Itamaraty Declaration and the attainment of the objectives of peace and friendship within the framework of the Rio de Janeiro Protocol.

In order to ensure this binding character, we shall only submit a proposal if the Congresses of both countries have approved that procedure. The Guarantor Countries consider that the success of the solution depends on the speedy resolution of that question. Since three of the Heads of State of the four Guarantor Countries of the Rio de Janeiro Protocol will be present at the forthcoming Oporto meeting, it would be very useful if the decisions of the Congresses of Ecuador and Peru were made known by that time.

Our proposal will relate to a comprehensive and lasting agreement, and will therefore encompass the agreements already reached between Ecuador and Peru and a formula for settling outstanding issues relating to the on-site marking of the common land border.

In view of the keen interest with which His Holiness Pope John Paul II has followed the evolution of the peace process and the profound religious convictions of the peoples of Peru and Ecuador, the Guarantors will request a Papal blessing once we have established a settlement formula in accordance with the Rio de Janeiro Protocol.

Fernando Henrique **Cardoso**
President of the Federative Republic of Brazil

# Annex III

## Approval by the Congress of Peru of the request of the Guarantors (16 October 1998)

Legislative resolution

Considering:

That it is of vital importance for the Republic that the border between Peruvian territory and the Republic of Ecuador should be not only delimited but also completely demarcated.

That, in connection with that border, the two countries signed in 1942 the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, which was approved by the Congresses of Peru and Ecuador.

That the aforementioned Protocol provides that the Governments of Argentina, Brazil, Chile and the United States of America are the Guarantors of the Protocol.

That when a disagreement arose concerning the interpretation of the Protocol in the Cordillera del Cóndor sector, the Parties decided to submit the question to arbitration by Braz Dias de Aguiar, who settled the dispute in a lasting manner by establishing in his award the line which the border should follow.

That on the basis of the Protocol and the aforementioned award the demarcation was carried out and the corresponding markers placed on approximately 90 per cent of the border. However, the demarcation could not be completed because before its completion the Republic of Ecuador objected to the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942.

That despite the traditional desire for peace which has characterized Peru, this controversial situation has given rise in recent decades to regrettable armed conflicts between the two countries in which young Peruvians and Ecuadorians lost their lives.

That since the latest conflict, in 1995, substantive talks have been undertaken within the framework of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, the Braz Dias de Aguiar award and other supplementary instruments with a view to completing the placement of markers within the framework of a comprehensive and lasting agreement. Success in these talks is the best way of strengthening peace between Peru and Ecuador.

That after the positions of the two countries with regard to the elimination of differences had been substantially reconciled, within the framework of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, an impasse developed in the final stage of the talks that could have brought the process to a halt, creating the risk of further armed conflicts. It was therefore considered essential to find a legal way out of the situation.

That article 7 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942 provides that "any doubt or disagreement which may arise over the execution of this Protocol shall be resolved by the Parties with the assistance of the representatives of the United States, Argentina, Brazil and Chile within the shortest period possible". Furthermore, point 4 of the Santiago Agreement empowers the Guarantor Countries "to propose the most appropriate procedures for the lasting solution of the points of disagreement that the Parties have not succeeded in resolving directly".

That in application of the aforementioned rules, the Governments of the two countries have requested the Guarantors to lend assistance with a view to overcoming the current difficulty and achieving a comprehensive and lasting agreement. For their part, the Guarantor Countries have expressed their readiness to lend assistance in order that the Parties may reach an agreement, offering to Peru and Ecuador to submit a proposal concerning the problem which has arisen with regard to the on-site marking of the common land border in application of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942. The proposal should be binding in character and, furthermore, the will of the Parties must be supported by their respective Congresses.

That this proposal is appropriate because the text of the letter from the parties requesting the assistance of the Guarantors, like the text of the reply by the latter, establishes clearly that this view would be based on legal, not political, considerations. This legal approach is required by the framework linking the two countries, consisting of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, and the Braz Dias de Aguiar award, and by the progress made during the process initiated with the Itamaraty Declaration of Peace. The latter includes the opinions of the legal and technical groups appointed by the Guarantors, which were issued in May 1998.

That at the request of the President of the Republic, the Joint High Command of the Armed Forces has reported that the procedure proposed by the Guarantor Countries in no way jeopardizes the sovereignty or territorial integrity of our

country, since it adheres to the aforementioned legal framework.

That for all these reasons the Congress agrees to the request of the Executive Power, supporting it in this undertaking which it will assume in exercise of the powers conferred on it by article 118 of the Constitution. This support does not constitute an exception to the need for international treaties to be approved before they are ratified, as established in article 56 of the Constitution, or to any other intervention by the Legislative Power that may be required under the Constitution and the laws of the Republic.

That Peru wishes to overcome its historical disagreements with fraternal countries, so that the challenge of the economic, political, social and cultural integration of the nations of Latin America may be faced and a joint struggle waged to achieve peace and combat underdevelopment and poverty.

Adopts the following legislative resolution:

Article 1. Purpose of the resolution: To approve the procedure proposed by the Guarantor Countries and by the Executive Power, with a view to permitting those countries to assist in resolving the disagreements concerning the on-site marking of the common land border, in accordance with the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, the Braz Dias de Aguiar award and other supplementary legal instruments, and the progress made during the process initiated with the Itamaraty Declaration of Peace.

Article 2. Approval of other international instruments: The comprehensive agreement on border integration and the treaty on trade and navigation to be signed shall be submitted to Congress for its approval before they are ratified, in accordance with the Constitution and laws of the Republic.

Article 3. Time limit for the application of the procedure:

3.1. The application of the procedure referred to in article 1 must take place "within the shortest period possible", in accordance with article 7 of the Protocol of Peace, Friendship and Boundaries of 1942.

3.2. If for any reason the Peruvian Congress considers that the time taken to resolve the disagreements has unreasonably exceeded the criterion referred to in the preceding paragraph, the authorization granted in this resolution shall become null and void.

The resolution was adopted by 87 votes to 26 with 1 abstention and 6 absent. Total, 120 legislators.

# Annex IV

## Proposed solution by the Heads of State of the Guarantor Countries addressed to the President of Peru (Brasilia, 23 October 1998)

In accordance with article 7 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries, our Governments assumed the role of Guarantors of the implementation of that treaty. In so doing, we undertook to facilitate understandings between the Parties whenever necessary. This responsibility involves the introduction of elements that might elucidate those points on which disagreements exist.

We, the Guarantor Countries, must recognize that the Parties, on the basis of the Rio de Janeiro Protocol and in conformity with the Itamaraty Declaration of Peace and other documents emanating from the process initiated with it, have sought to attain the lofty objectives of peace, friendship and understanding that would enable them to develop a cooperative relationship of mutual benefit in accordance with the purposes set forth in article 1 of the Protocol.

We therefore note with satisfaction that this process has so far produced drafts concerning a treaty on trade and navigation, navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river, a comprehensive agreement on border integration, the establishment of a binational commission on mutual confidence- and security-building measures, and an agreement on the elaboration of measures aimed at ensuring the effective functioning of the Zarumilla channel.

Your Government has, together with the Government of Ecuador, conveyed to us its concern at having endeavoured throughout this protracted process to complete all the items in the understandings, as described by the Brasilia Declaration of 26 November 1997 and the timetable signed in Rio de Janeiro on 19 January 1998, without achieving results commensurate with the expectations of the two peoples. As you mentioned in the joint letter which you and the President of Ecuador sent to the President of Brazil on 8 October 1998, the difficulties encountered have to do with the completion of the on-site marking of the common land boundary.

In the aforementioned letter, the Parties requested our assistance in formulating a comprehensive and lasting proposal that would contribute to the attainment of the objectives of peace, friendship, understanding and goodwill by which they are motivated. Our Governments, by means of the letter dated 10 October 1998 from the President of Brazil, informed you that arriving at such a proposal would require the prior agreement of the two Governments that our view is binding on the Parties and the approval by the Peruvian and Ecuadorian Congresses of the commitments made.

These requirements having been met, we, the Heads of State of the Guarantor Countries, in accordance with the Santiago Agreement and the timetable signed in Rio de Janeiro, therefore express our view, which the Parties have accepted as binding, and which contains the following elements for completion of the on-site marking of the common land boundary and thus for completion of the comprehensive and lasting agreement:

(1) With regard to the differences between the Parties as to the opinions of the experts designated by the Guarantor Countries, in accordance with the timetable for implementation of the Brasilia Declaration, on the three issues submitted for their consideration, the Guarantor Countries consider that these opinions constitute the application of the provisions of the Rio de Janeiro Protocol and the Braz Dias de Aguiar arbitral award; accordingly, the Parties should proceed to complete the demarcation in the manner set forth in the aforementioned opinions. To that end, the geographical maps annexed hereto specify the geographical coordinates of the landmarks to be established.

(2) In accordance with the attached sketch, the Government of Peru shall transfer as private property to the Government of Ecuador an area of 1 $km^2$, the centre of which shall be the point provided to the Ecuador-Peru Military Observer Mission (MOMEP) by Ecuador, called Tiwinza, in the sector known in Ecuador as Tiwinza.

(3) The transfer shall take place free of charge by means of a public instrument to be concluded by the respective entities of Peru and Ecuador. It shall be signed upon the entry into force of the comprehensive and lasting agreement. This transfer shall not imply the assignment of sovereignty. The aforementioned property shall not be subject to confiscation by the Government of Peru.

(4) The Government of Ecuador shall, in its capacity as owner of the land, enjoy the real property rights conferred by the private national law of Peru, with the exception of the right of transfer. The exploitation of this land by Ecuador shall be consistent with the conservation norms applicable to the area in which it is situated.

(5) Within the area belonging to it, the Government of Ecuador shall not station police or military forces or carry out any police or military activities, with the exception of commemorative ceremonies coordinated beforehand with the Government of Peru.

(6) Ecuadorian nationals may transit freely via a single public carriage road of up to 5 m in width which connects the area transferred as property with the territory of Ecuador. This road shall be brought into service 30 months following the entry into force of the comprehensive and lasting agreement, and shall be maintained for this purpose by Peru on the shortest and most accessible path leading to the territory of Ecuador. The technical committee referred to in paragraph 9 of the Protocol shall be responsible for determining the path of this road. The respective border control posts shall be set up for this purpose on both sides of the border. In view of the environmentally sensitive nature of the area, no weapons of any kind may be transported from one country to another.

(7) Each Party shall, within its territory and in accordance with its national legislation, establish an environmentally protected area under the sovereignty and jurisdiction of the respective State within the areas and perimeters specified in the attached sketch. The two environmentally protected areas shall have the same name and shall be adjacent and contiguous within the common boundary sector which they encompass.

(8) Members of the indigenous communities of the region may transit freely between the two environmentally protected areas.

(9) The administration of each area shall be under the authority of the competent and specialized authorities of the respective country, who shall coordinate with each other through a Peruvian-Ecuadorian technical committee, and shall request national and international private non-profit entities specializing in natural resources conservation and management to prepare the requisite studies and to collaborate in the management of natural resources so as to ensure their appropriate conservation.

(10) The respective national police authorities and park rangers shall be responsible for the security of each environmentally protected area. The border posts of each Party situated within each of these areas shall be under the authority of police units, and, in view of their environmentally protected nature, no new military posts shall be established within their boundaries. The military posts existing within each park, namely, the Coangos post in Ecuador and the PV1 post in Peru, may retain their current levels of personnel, not to exceed 50 at each post.

(11) In addition, the Parties shall proceed to formalize the draft treaties and agreements whose texts form part of the comprehensive and lasting agreement that will put an end to the differences between the two countries. We also have the pleasure to inform you that, as we stated in our letter of 10 October, this settlement formula has been brought to the attention of His Holiness Pope John Paul II, who takes deep satisfaction in the achievement of this lofty compromise and prays that this agreement may be the basis of a lasting coexistence, in peace and prosperity, between the fraternal peoples of Peru and Ecuador.

The Guarantor Countries consider that, in this way, the process initiated with the Itamaraty Declaration of Peace will have been completed in a manner that takes into account the interests and feelings of the two nations and ensures the full and faithful implementation of the Rio de Janeiro Protocol. That will enable the aspirations of the peoples of Peru and Ecuador for peace, friendship and confidence in a common future to flourish.

(*Signed*) Carlos Saúl **Menem**
President of Argentina

(*Signed*) Fernando Henrique **Cardoso**
President of Brazil

(*Signed*) Eduardo **Frei**
President of Chile

(*Signed*) William **Clinton**
President of the
United States of America

# Annex V

## Text of the Brasilia Presidential Act of 26 October 1998

1. Express their conviction regarding the historic significance of the understandings reached between the two Governments for the development and well-being of the fraternal peoples of Ecuador and Peru. With these understandings, the process of substantive talks provided for in the Itamaraty Declaration of Peace of 17 February 1995 has been completed and a comprehensive and lasting end has been put to the differences between the two republics, so that, on the basis of their common roots, the two nations can advance towards a promising future based on cooperation and mutual benefit;

2. Declare that, with the binding view expressed by the Heads of State of the Guarantor Countries in their letter dated 23 October, which forms an integral part of this document, the border discrepancies between the two countries have been settled definitively. On this basis, the firm and unshakeable will of their Governments to complete the on-site marking of the common land boundary within the shortest possible time has been placed on record;

3. Simultaneously declare their commitment to submit the agreements signed on this date to the domestic ratification procedures, as necessary, with a view to ensuring their speedy entry into force.

These agreements are as follows: the Treaty on Trade and Navigation, in application of article 6 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries; the Comprehensive Agreement on Border Integration, which includes the establishment of a Peruvian-Ecuadorian Good-Neighbourliness Commission; a Treaty on the Transit of Persons, Vehicles, Maritime and Fluvial Vessels and Aircraft; a Binational Plan for Border Area Development, which includes a Binational Fund for Peace and Development; an Agreement for the Acceleration of Trade Liberalization; a Memorandum of Understanding on the Puyango-Tumbes Binational Project; a Memorandum of Understanding on the Tumbes-Machala Development Plan; a Memorandum of Understanding on Road Connections between the two countries; an Agreement on Electrical Connections and an Agreement on Oil Pipeline Connections; a Memorandum of Understanding on the Promotion of Tourism; an Agreement on Cooperation in the Fisheries Sector; a Supplementary Agreement on Educational Cooperation; a Framework Agreement on the rehabilitation or reconstruction of the inlet and related construction work on the Zarumilla channel, and Administrative Regulations concerning the Zarumilla channel and the exploitation of its waters; a specific Agreement on matters relating to navigation in the sectors where the boundary line intersects the rivers, in particular the Napo river; an agreement for the establishment of a Commission on Mutual Confidence- and Security-building Measures.

4. Expressly place on record the importance of the agreements reached for the ideals of peace, stability and prosperity to which the American continent is committed. In that connection, and in accordance with article 1 of the Rio de Janeiro Protocol of Peace, Friendship and Boundaries of 1942, they solemnly reaffirm their rejection of the threat or use of force in relations between Peru and Ecuador and of all acts that may undermine peace and friendship between the two nations.

5. The Presidents of Ecuador and Peru, wishing to emphasize their appreciation for the fundamental role played in the attainment of these understandings by the Governments of the Argentine Republic, the Federative Republic of Brazil, the Republic of Chile and the United States of America, the Guarantor Countries of the Protocol of Peace, Friendship and Boundaries signed in Rio de Janeiro on 29 January 1942, place on record the gratitude of their nations for the dedication and effort shown by those countries in seeking the implementation of the Protocol, and call upon them to continue to fulfil that function until the demarcation has been completed.

This Act has been signed by His Excellency Mr. Alberto Fujimori, President of the Republic of Peru, and His Excellency Mr. Jamil Mahuad Witt, President of the Republic of Ecuador, and endorsed by Mr. Fernando de Trazegnies Granda, Minister for Foreign Affairs of Peru, and Mr. José Ayala Lasso, Ambassador of Ecuador.

The following persons have signed it in their capacity as witnesses of this solemn ceremony: His Excellency Mr. Fernando Henrique Cardoso, President of the Federative Republic of Brazil; His Excellency Mr. Carlos Saúl Menem, President of the Argentine Republic; His Excellency Eduardo Frei Ruiz-Tagle, President of the Republic of Chile; and the Personal Representative of the President of the United States of America, Mr. Thomas F. McLarty III.

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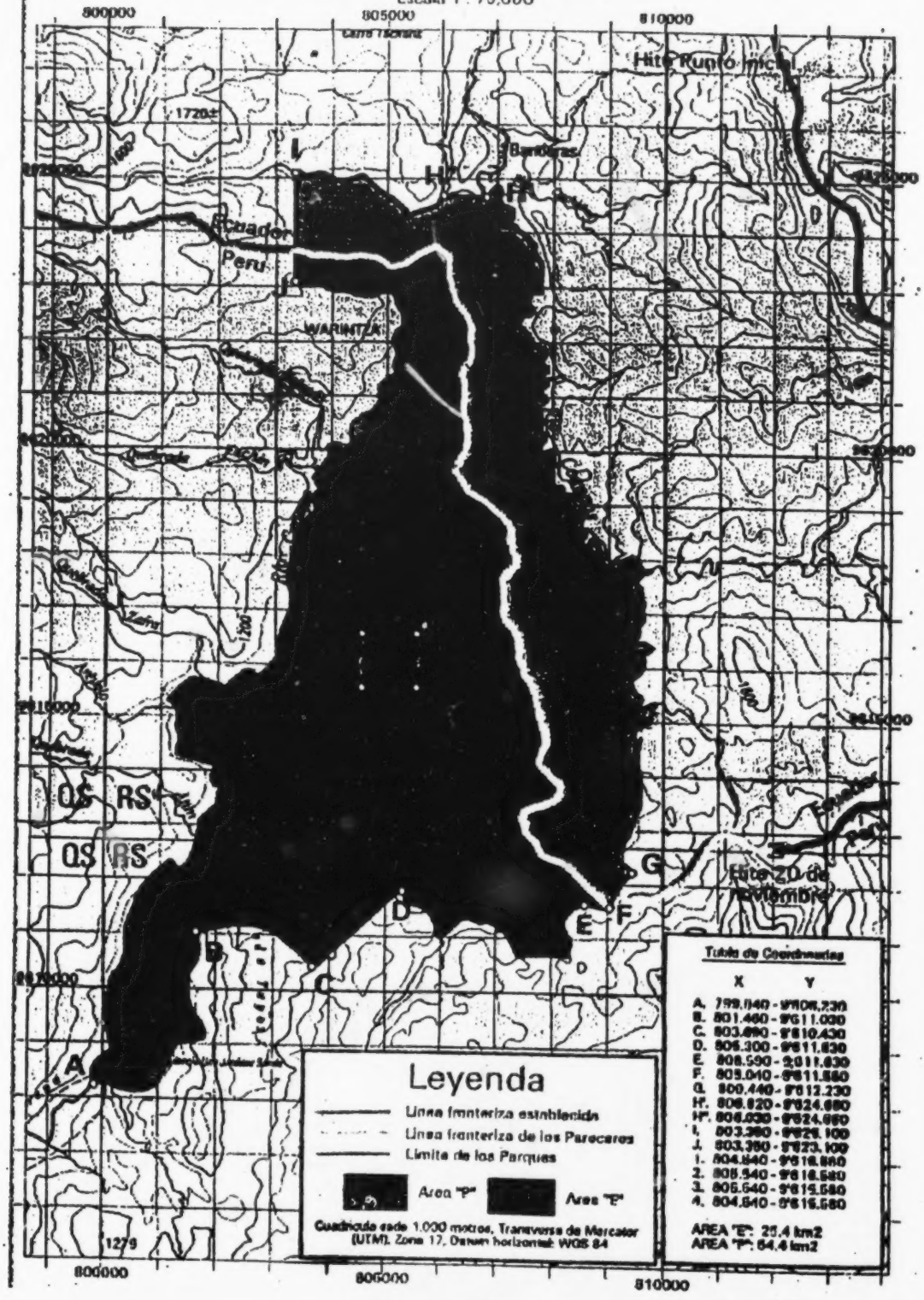


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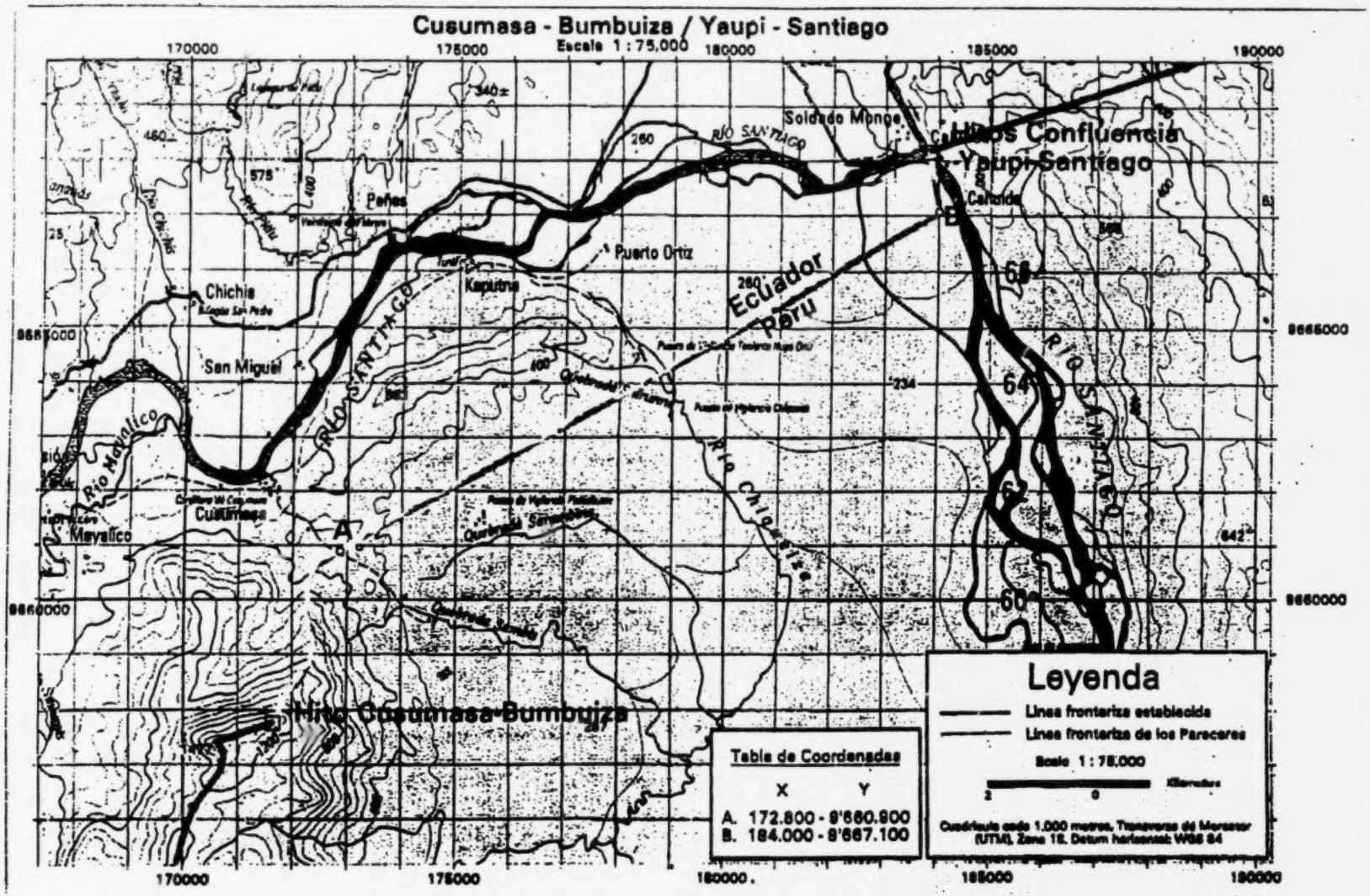
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ECUADOR - PERU RAS11A980053 - 23 Octubre, 1998

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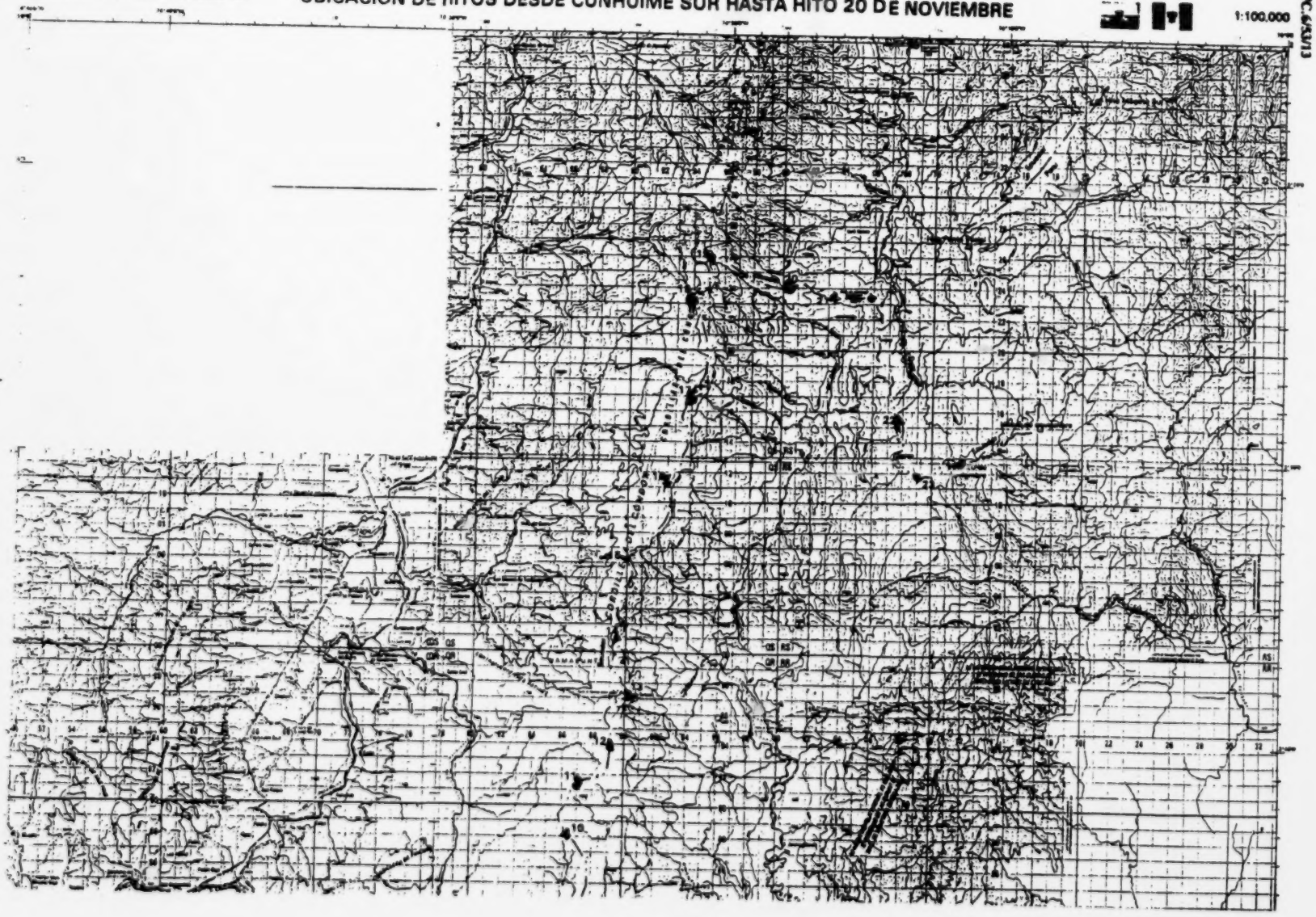

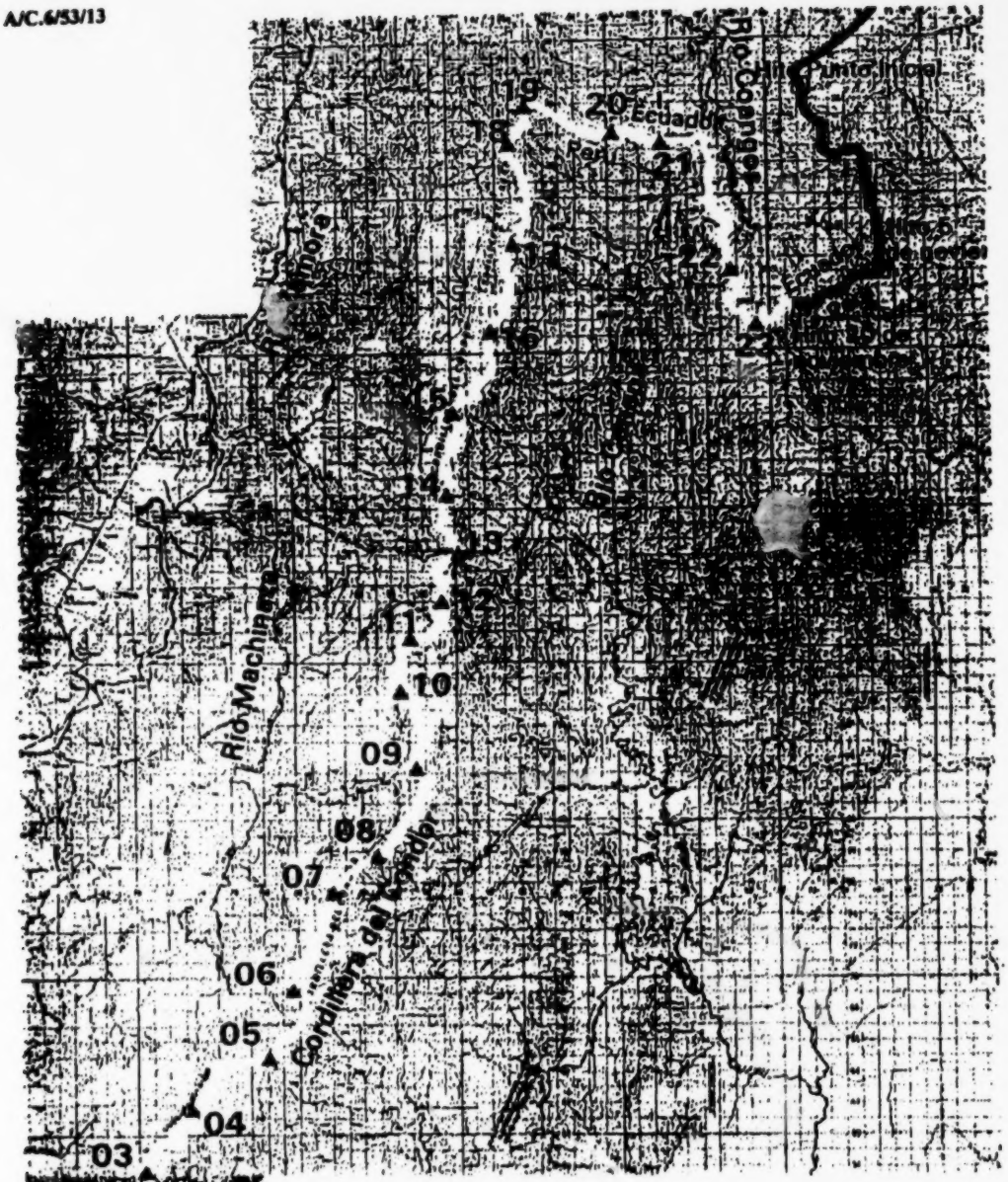


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